Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No._____

In The
Supreme Court of the United States

Willard D. Gross
Petitioner,

V.

Fred Irtz, Administrator
Respondent,

On Petition For a Writ of Certiorari
To The Supreme Court of Kentucky

PETITION FOR A WRIT OF CERTIORARI

Willard D. Gross pro se
6718 Russell Cave Road
Lexington, Kentucky 40511
(859) 299-6109

22pp

QUESTIONS PRESENTED

Whether the petitioner has a constitutional right to free speech and separation of church and state, pursuant to the First Amendment to the Constitution of the United States?

Whether the petitioner has a constitutional right to due process of law, pursuant to the Fifth Amendment to the Constitution of the United States?

Whether the petitioner has a constitutional right to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have assistance of counsel for his defense, pursuant to the Sixth Amendment to the Constitution to he United States?

Whether the petitioner has a constitutional right to due process of law and equal protection of the law, pursuant to the Fourteenth Amendment to the Constitution of the United States?

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, counsel for attorney Fred Irtz administrator for the Estate of Caleb P. Gross, Robert C. Monk is attorney of record Case No. 2000-SC-0983-D Kentucky Supreme Court and (2000 CA-001874-D) Kentucky Court of Appeals.

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OPINIONS BELOW

The opinion of the Kentucky Supreme Court is reproduced in the appendix at Pet. App.1. The opinion of the Kentucky Court of Appeals is reproduced in the Appendix at Pet. App. 2.

JURISDICTION

The Order denying discretionary review by the Kentucky Supreme Court was entered on June 7, 2001. This court has jurisdiction under 28 U.S.C. $ 1257.

The Supreme Court of the United States, Office of the Clerk granted petitioner extended time to file his petition for a Writ of Certiorari to include within 60 days from August 14, 2001.

CONCISE STATEMENT OF THE CASE

The case before the court begins on May 2, 1997. District Probate Court Fayette County, Kentucky, appointed administrator of petitioners Father's Estate. Petitioner claims that the appointment is unlawful and files motions to terminate the appointment and to disqualify the Judge. Both motions were sealed by the court.

Some ten months later the court disqualified itself stating a conflict of interest with the petitioner. Motion to terminate the administrator was kept sealed until April 3, 2000, this denying petitioner access to the court for 31 months. After proper appeals on June 7, 2001 Kentucky Supreme Court denied motion for discretionary review.

Petitioner raised the violation of his constitutional rights on page 10 of his motion for discretionary review to the Supreme Court of Kentucky. On page 4 and 5 of his motion for discretionary review to the court of appeals. On page 2 of his statement of appeals to the Fayette Circuit Court, Lexington, Kentucky.

Petitioner raised violations of his constitutional rights in his motion for disqualification of District Probate Court, filed June 20, 2000. (6 pages)

REASONS FOR GRANTING THE WRIT

1. Under Amendment I Freedom of religion and speech. The court violated the separation of church and state clause when it pleaded with the petitioner to drop his motion to terminate the appointment of Fred Irtz and turn the case over to him and stated "that if there is any wrong doing forget it and further on down the road GOD will take care of it." (page 9 of Motion for Discretionary Review)

The court denied petitioner free speech for 31 months when it sealed his motion to terminate the appointment of the administrator; also when the court denied him the right to address the court in a case which he was a participant.

2. Under Amendment V Due Process of Law. The court threatened petitioner at least four times with a $1,000 fine and 1 year in jail for practicing law without a license and filing frivolous motions. The court had no proof of either, then sentenced petitioner to thirty days in jail for contempt of court. This action by the court was done for intimation, all in violation of petitioner's Fifth Amendment Rights.

3. Under Amendment VI Petitioner has the right to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have Assistance of Counsel. Petitioner constitutional rights were violated in all three cases.

Petitioner subpoena two witnesses which the court refused to allow him to question and refused to allow him to subpoena a clerk of the probate court. The court further denied petitioner his right to counsel. His attorney called the court and set a date for hearing to be held. Petitioner's attorney failed to appear before the court, the court overruled petitioner's motion without counsel being present and without holding a hearing.

4. Under Amendment XIV Due process; Equal protection. No state shall deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

It is clear that petitioner has been denied due process of the law and been denied equal protection of the law. He has also been denied equal access to the court.

CONCLUSION

The court should grant a writ of certiorari, vacate the appointment of attorney Fred Irtz as administrator of C.P. Gross' Estate and remand this case to the Kentucky Supreme Court with instructions for a new hearing in the probate court with a different jurisdiction.

Respectfully submitted,

Willard D Gross

Willard D. Gross, pro se
6718 Russell Cave Road
Lexington, KY 40511
(859) 299-6109

APPENDIX

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Willard D. Gross V. Fred Irtz, Kentucky Supreme Court Case # 2000-SC-0983-D (June 7, 2000)..... App. 1

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Objection to the Probate Court's ruling denying Petitioners his right to subpoena Probate Clerk Carla Million. (April 11, 2000)..... App.3

Subpoena for CA Judge Julia Tackett. The court denied Petitioners his right to question Judge Tackett (April 11, 2000).....App.4

Subpoena for Fred Irtz. The court denied Petitioner his right to question Fred Irtz, Administrator.....App.5

Case History Fayette District Court # 91-P-01247. (Aug.25 1997).....App.6

Petitioner filed motion to disqualified Judge Tackett.....App.6

Case History Fayette District Court #91-P-01247. (Aug.25, 1997).....App.6

Appendix Continued

Petitioner filed motion to terminate the appointment of Fred Irtz as Administrator of C.P. Gross' estate.....App.6

Case History Fayette District Court #91-P- 01247. (Aug., 25, 1997) Motion to disqualify Judge Tackett sealed by court order.....App.6

Case History Fayette District Court #91-P-01247. (Aug.25, 1997) Motion to terminate appointment of Fred Irtz as Administrator sealed by the court order.....App.6

Judge Tackett issued Order to recuse herself from case.....App.7

Sequence of events leading to the recusation of Judge Julia Tackett.....App.8

App. 1

SUPREME COURT, STATE OF KENTUCKY
CASE NO. 2000-SC-0983-D
(2000-CA-1874)

WILLARD D. GROSS MOVANT

V. FAYETTE CIRCUIT COURT
NO. 2000-XX-0024

FRED IRTZ, ADMINISTRATOR RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied. Keller, J., not sitting.

ENTERED June 7, 2001.

Chief Justice

Commonwealth of Kentucky
Court of Appeals
NO. 2000-CA-001874-D

WILLARD D. GROSS MOVANT
SON- HEIR OF CALEB P. GROSS, DECEASED

ON MOTION FOR DISCRETIONARY REVIEW
FROM FAYETTE CIRCUIT COURT
ACTION NO. 00-XX-00024

V.

FRED IRTZ, ADMINISTRATOR RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

BEFORE: GUDGEL, Chief Judge; JOHNSON AND SCHRODER, JUDGES.

The Court has considered the motion for discretionary review and the response thereto; movant's motion to dismiss response and the response and the response thereto; and movant's motion for special leave of the Court to file motion under Rule 9.02 fraud, mistake, condition of mind. The Court, being sufficiently advised, ORDERS the motions be DENIED.

Entered: OCT 09 2000

JUDGE, COURT OF APPEALS

App.3

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION
IN RE: THE ESTATE OF CALEB PR. GROSS,
DECENT
CASE NO. 91-P-1247

OBJECTION

Comes Willard D. Gross, son and heir of Caleb P. Gross and files his OBJECTION to this court holding any hearing on any other issues in this case until the Motion to Terminate Fred Irtz' unlawful appointment as administrator of Caleb P. Gross' Estate has been finalized.

Further, Willard D. Gross also objects to this court's ruling denying Willard the right to subpoena Carla Million, clerk of probate court to appear before the court in the disputed matter of the fiduciary bond application.

Willard D. Gross, pro se
Son and heir of C.P. Gross
6718 Russell Cave Road
Lexington, KY 40511

CERTIFICATE OF SERVICE

I hereby certify that mailing or hand delivering a true copy of the same to the following on the 10 day of April 2000 served the foregoing instrument.

Robert Monk
111 West Short Street
Lexington, KY 40507

Thomas Burnett
156 Market Street
Lexington, KY 40507

Willard D. Gross

Commonwealth of Kentucky
Court of Justice

Case No. 91-P-1247
Court- Probate
County- Fayette

SUBPOENA

IN REF: THE ESTATE OF CALEB P. GROSS, DECEASED

Plaintiff(s) VS. Defendant(s)

1. The Commonwealth of Kentucky to : Julia K. Tackett, judge of the C of Appeal Court of Appeals, 360 Democrat Drive, Frankfort KY 40601-9229

2. You are commanded to appear before: Fayette Probate Court.

3. At Fayette County District Court, 136 N. MLK BLVD. Lexington, KY

4. On the 17th day of April 17, 2000 at 9 a.m. Eastern Time

5. To testify in behalf of the heirs of C.P. Gross.

6. Robert M. True — Willard D. Gross, pro se

By U. Tale
Signature & Title Issuing Off.
4/11/00

Name of Requesting Attorney
(606) 299-6109

App. 5

Commonwealth of Kentucky
Court of Justice

Case No. 91-P-1247
Court- Probate
County- Fayette

SUBPOENA

IN REF: THE ESTATE OF CALEB P. GROSS, DECEASED

Plaintiff(s) VS. Defendant(s)

1. The Commonwealth of Kentucky to: Fred Irtz 111 West Short Street, Lexington, KY

2. You are commanded to appear before: Fayette Probate Court.

3. Fayette County District Court 136 N. MLK Blvd.

4. On the 17th day of April 2000 at 9 a.m. Eastern Time.

5. To testify in behalf of the heirs of C.P. Gross.

6. Robert M. True
By U. Tale
Signature & Title Issuing Off.
4/11/00

Willard D. Gross, pro se
Name of Requesting Attorney
(606) 299-6109

App. 6

CASE HISTORY

6/27/00

COUNTY: FAYETTE
COURT: DISTRICT
CASE: 91-P-1247
ESTATE OF: GROSS, CALEB P.

OPENING JUDGE: HONORABLE KEVIN HORNE
CURRENT JUDGE:
CLOSING JUDGE: HONORABLE KEVIN HORNE

08/25/97 Scheduled Event 09/24/97 at 8:30 am
MOTION HOUR
HONORABLE JULIA TACKETT

*MOTION
08/25/97 Scheduled Event 10/08/97 at 8:30 am
MOTION HOUR
HONORABLE JULIA TACKETT

*MOTIONS
08/25/97 Motion filed
MOTION-OTHER
PETITIONER/ FIDUCIARY

*SEALED BY THE COURT ORDER
08/25/97 Motion filed
MOTION-OTHER
ATTORNEY

* MOTION SEALED BY COURT ORDER

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

In Re: The Estate of Caleb Powers Gross, Decedent
Case No. 91-P-01247

ORDER

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Upon Motion of Willard Gross for recusation of Judge Julia Tackett, and the Court having considered all relevant factors presented by the parties, and it appearing at this time that said Judge would have a conflict of interest by presiding herein, and the Court being sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Judge Julia Tackett does hereby recuse herself from presiding over all matters pending in the Estate of Caleb Powers Gross, and is relieved of all further responsibility herein. It is further directed that this matter be assigned by the Clerk to Judge Kevin M. Horne, Division Two, Fayette District Court.

Dated this 5th day of May, 1998.

Julia K. Tackett, Judge

App. 8

SEQUENCE OF EVENTS LEADING TO THE RECUSATION O JUDGE JULIA TACKETT

1. In hearing held on April 9, 1997. petitioner verbally asked Judge Tackett to vacate the bench, in that her term as probate judge expired on April 4, 1997. Judge Tackett also had a conflict of interest in this case. Judge Tacket refused to vacate the bench.

2. On May 2 1997, Judge Tackett appointed Fred Irtz as Successor Exectutor of C.P. Gross' Estate without the will annexed and in violation of the following:

KRS. 395.120 Oath of Representatives. Fred Irtz did not take oath.

KRS. 395.130 Bond. Fred Irtz did not file a bond.

KRS. 395.015 Application for appointment of personal representatives. Fred Irtz did not file an application.

KRS. 395.016 Notice of hearing application. No hearing was held.

KRS. 395.040 Administrative person entitled to be appointed.

3. On June 24, 1997, petitioner filed a complaint against Judge Tackett with the Judicial Retirement and Removal Commission.

4. On July 7, 1997 petitioner and all participating heirs filed notice with Probate Court for the termination of the appointment of Fred Irtz as successor executor. Judge Tackett refused to act.

5. On July 22, 1997, petitioner and all participating heirs filed motion to terminate the appointment of Fred Irtz. Judge Tackett refused to hear motion.

6. On August 25, 1997, petitioner filed motion to disqualify Judge Julia Tackett. Judge Tackett sealed this motion by court order on August 25.1997.

7. On August 25, 1997, petitioner filed amended motion for the termination of Fred Irtz as successor executor. Judge Tackett sealed this motion by court order on August 25, 1997.

8. Judge Tackett recused herself from this case on May 5th ,1998 stating a conflict with petitioner this being 13 months after Judge Tackett was asked to vacate the bench on April 9, 1997.

9. Judge Tackett in her order recuseing herself appointed Judge Kevin Horne to replace her in this case. There are six district judges and under the rules a case is assigned by draw.

10. Judge Kevin Horne on or about June 6, 1998 stated that Judge Tackett asked him not to hear any motions that were before the court in this case and he agreed. He reaffirmed this position on April 3, 2000. This being approximately 3 years after Judge Tackett was asked to vacate bench in this case.

11. On April 3, 2000, petitioner's attorney Joe Clark who by phone called Judge Horne and together set the date of April 3, 2000 for hearing this case, failed to appear before the court. Judge Horne overruled petitioner's motion to terminate the appointment of Fred Irtz without his attorney being present.

Petitioner objected and gave verbal notice of appeal. Judge Horne accepted and stated this as far as we can go and started to leave the court. He then stated "What am I doing" and then turned the hearing into a "Get acquainted hearing." Judge Horne refused to issue an order overruling petitioners motion.